

Appeal from a decision of the California State Office, BLM, declaring unpatented mining claims CA MC 34636 through CA MC 34646 abandoned and void.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

An unpatented mining claim is properly declared abandoned and void when a claimant fails to file either evidence of annual assessment work or a notice of intent to hold the claim on or before Dec. 30 of a calendar year.

APPEARANCES: Doyle C. Cape, Brawley, California, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Doyle C. Cape, d.b.a. Cape Mining and Exploration Company, appeals from a November 13, 1987, decision of the California State Office, BLM, declaring unpatented mining claims CA MC 34636 through CA MC 34646 abandoned and void for failure to file with Riverside County, the local recordation office, on or before December 30, 1986, evidence of assessment work performed thereon or notice of intention to hold the claims, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982).

On appeal, appellant contends that proof of assessment forms were mailed to both BLM and the local recordation office on December 30, 1986. Appellant asserts that the documents were received by BLM and Riverside County on January 2, 1987, as indicated by certified mail receipt, Item Nos. P 478 939 189 and P 478 939 190, respectively. In support of his contention, appellant has submitted, for years 1986 and 1987, copies of the pertinent certified mail receipts and copies of assessment forms filed with BLM.

With regard to the documents submitted in support of his appeal, appellant, in his statement of reasons (SOR), states the following:

The Riverside County Recorder did receive the original copy of the Assessment Work Notice, marked (Exhibit D) for all of my mining claims [p]ostmarked December 30, 1986. I do not have any idea whatsoever why they were not processed until January 23, 1987. Irregardless of their date of processing, I did timely file the notices and that is what is required of myself.

Included for your review is (Exhibit E) the 1987 Assessment Work Notices, and (Exhibit F) return receipts postmarked 12-31-87[. T]hey were signed for on 1-5-87 [1/] and time stamped 1-6-88 at the Riverside County Recorder's Office, proving that without any doubt they make errors in their documentation. Also BLM Sacramento signed for the Return Receipt without dating it.

A review of appellant's exhibits reveals that in 1986, he mailed two items by certified mail on December 30. One item was signed as received by BLM on January 2, 1987 (receipt No. P 478 939 189); the other was signed as received by the Riverside County Recorder on the same date (receipt No. P 478 939 190). Copies of certified mail receipts submitted by appellant for year 1987 reveal a postmark date of December 31, 1987, for items mailed both to BLM and the Riverside County recordation office (receipt Nos. P 787 110 823 and P 787 110 821, respectively). The item mailed to Riverside County was signed as received on January 5, 1987; BLM did not date receipt No. P 787 110 823, although it was signed as received.

[1] Section 314 of FLPMA, 43 U.S.C. § 1744 (1982), and implementing regulations at 43 CFR 3833.2-1, require the owner of an unpatented mining claim located on public land to file evidence of assessment work performed or a notice of intention to hold the mining claim with the proper BLM office before December 31 of each year. 43 U.S.C. § 1744(a) (1982) provides, in pertinent part: "The owner of an unpatented lode or placer mining claim located prior to October 21, 1976, shall, within the three-year period following October 21, 1976, and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection." (Emphasis added.) The relevant regulation provides that:

For the purpose of complying with § 3833.2-1 of this title, "timely filed" means being filed within the time period prescribed by law, or received by January 19th after the period prescribed by law in an envelope bearing a clearly dated postmark affixed by the United States Postal Service within the period prescribed by law.

43 CFR 3833.0-5(m). A filing bearing a postmark of December 31 is not timely filed. J.W. Doyle, 87 IBLA 158 (1985). Failure to file one of the two instruments within the prescribed time period conclusively constitutes an abandonment of the claim, regardless of the claimant's intent to hold the

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1/ Although the signature on the return receipt card bears a handwritten date of Jan. 5, 1987, the evidence of assessment work was date-stamped as received on Jan 6, 1988, and, thus, it is apparent that the date of receipt was January 1988.

claim. 43 U.S.C. § 1744(c) (1982); United States v. Locke, 471 U.S. 84 (1985).

As Congress mandated that failure to file the proper documents within the prescribed time limits will, in and of itself, cause the claim to be lost, this Board has no authority to excuse lack of compliance, to extend the time for compliance, or to afford any relief from statutory consequences. United States v. Locke, *supra*; Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). As a general rule, where BLM's records do not contain evidence that either a notice of intention to hold the claim or a proof of assessment affidavit has been filed within the prescribed filing period, the claims will be properly declared abandoned and void. Charlene Schilling, 87 IBLA 52 (1985); J. Neil Smith, 77 IBLA 239 (1983); Lynn Keith, *supra*.

In its decision declaring appellant's claims abandoned and void, BLM noted that "a field office of the BLM has acquired a certified copy of the 1986 assessment work document recorded in Riverside County. The date of recording is January 23, 1987." BLM states that appellant did not file his proof of assessment work documents for 1986 prior to December 31 with the local recordation office. Yet appellant has submitted certified mail receipts which indicate that a document was in fact postmarked December 30, 1986, to be forwarded to the Riverside County recordation office. According to the mail receipt, the local recordation office signed that the document had been received on January 2, 1987. Thus, appellant has shown that the BLM decision was based on an erroneous premise, *i.e.*, that the evidence of assessment work for 1986 was not timely filed.

However, this is not dispositive of this case as appellant has, with his SOR, submitted to the Board copies of certified mail receipts indicat-ing that his 1987 proof of assessment filings were not timely filed. By appellant's own admission, the 1987 documents were mailed to both BLM and Riverside County on December 31, 1987. Appellant's submitted copy of the certified mail receipt forwarded to BLM (receipt No. P 787 110 823) bears a postmark of December 31, 1987. In United States v. Locke, *supra*, the claimants on December 31, submitted to BLM the annual notice of intent to hold or proof of assessment work performed. The Supreme Court held that the claims were abandoned and void, stating that section 314 of FLPMA, 43 U.S.C. § 1744(a) (1982), requires that these documents be filed "prior to December 31." *Id.* at 90 (emphasis supplied).

Quite simply, a December 31 filing will not, under any circumstance, comply with the filing deadline of section 314. The Supreme Court noted that, while the statute may be harsh, it is nonetheless incumbent upon businessmen involved in the running of a major mining operation to have checked the regulations or to have consulted an attorney for legal advice. The Court's admonishment is equally applicable here: "Pursuit of either of these courses, rather than the submission of a last minute filing, would surely have led claimant to the conclusion that December 30 was the last day on which [he] could file safely." *Id.* at 95.

While BLM's decision declaring appellant's claims abandoned and void was premised upon questionable circumstances surrounding his 1986 filing, we

cannot overlook the unambiguous consequence of his 1987 filing, as to do so would serve no just purpose.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the California State Office is affirmed as modified.

Franklin D. Arness  
Administrative Judge

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I concur:

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C. Randall Grant, Jr.  
Administrative Judge